

RULES OF PRACTICE

of the

**District Court of the
Twenty-First Judicial District**

of the

State of Montana

In and for the county of

RAVALLI

Amended March 23, 2004

TABLE OF RULES

	<u>Page No.</u>
Rule 01. ASSIGNMENT OF CASES	1
Rule 02. LAW AND MOTION	1
Rule 03. MOTIONS, BRIEFS, AND HEARINGS	3
Rule 04. ORDERS, JUDGMENTS, OR DECREES	4
Rule 05. SERVICE OF PROCESS AND PAPERS	4
Rule 06. SCHEDULING ORDERS	4
Rule 07. PRE-TRIAL CONFERENCES	4
Rule 08. COMMUNICATIONS WITH THE COURT	5
Rule 09. COURT RECORDS	5
Rule 10. FILINGS	5
Rule 11. SETTLEMENT CONFERENCES	6
Rule 12. TRIALS	8
Rule 13. VOIR DIRE	8
Rule 14. ATTORNEYS	9
Rule 15. EXHIBITS	9
Rule 16. EVIDENCE OF CHARACTER	10
Rule 17. STIPULATIONS	10
Rule 18. OFFERS OF PROOF	10
Rule 19. FINDINGS OF FACT AND CONCLUSIONS OF LAW	10
Rule 20. SURETY	10
Rule 21. DECORUM	11
Rule 22. MARITAL DISSOLUTION ACTIONS	11
Rule 23. ORDERS OF PROTECTION	12
Rule 24. CHILD SUPPORT GUIDELINES & MEDICAL SUPPORT REQUIREMENTS	12
Rule 25. CRIMINAL AND DELINQUENCY ACTIONS	13
Rule 26. APPOINTMENT OF COUNSEL FOR INDIGENT PERSONS.	16
Rule 27. REMOVAL TO SMALL CLAIMS COURT	17
Rule 28. COURT SECURITY	17
Rule 29. POSTPONEMENT OF TRIALS OR HEARINGS	18
Rule 30. PROBATE FEES	18
Rule 31. SUBSTITUTION OF JUDGE	18
Rule 32. SIX-PERSON JURIES	18
Rule 33. PARENTING AND VISITATION GUIDELINES	18
1. GENERAL RULES	19
2. VISITATION OF CHILDREN OVER AGE FIVE . . . SOLE OR PRIMARY CUSTODY . . . RESIDE <u>NO MORE</u> THAN 200 MILES APART	24
3. VISITATION OF CHILDREN OVER AGE FIVE. . . SOLE OR PRIMARY CUSTODY . . . RESIDE <u>MORE</u> THAN 200 MILES APART	26
4. PARENTAL CHANGE OF RESIDENCE	26
Rule 34. WITNESSES	27
Rule 35. JUDGMENT ON WRITTEN INSTRUMENT	27
Rule 36. MEDIA	27
Rule 37. JURY SUMMONING PROCEDURE	28

These rules supplement the Montana Rules of Civil Procedure (“MRCP”), the Uniform District Court Rules (“UDCR”), and appropriate statutory and case law.

Rule 01. ASSIGNMENT OF CASES

- A. The District Court of the Twenty-First Judicial District has assumed full jurisdiction of all cases on file with the Fourth Judicial District in Ravalli County as of January 4, 1993, except for those cases which the Court elects to transfer to outside Courts where grounds for judicial disqualification exist or those in which the presiding Court is disqualified by one of the parties thereto within the time allowed by law. In addition the Court may assign existing cases to outside Courts in those cases where such assignment is required in the interest of judicial economy.
- B. The District Court of the Twenty-First Judicial District is divided into two departments: Department No. 1 presided over by Judge Jeffrey H. Langton; Department No. 2 presided over by Judge James A. Haynes. Pursuant to Uniform District Court Rule 14, the Honorable Jeffrey H. Langton is hereby designated Chief District Judge of the Twenty-First Judicial District, and shall hold this position in all odd-numbered years, commencing with calendar year 2003. The Honorable James A. Haynes shall hold the position of Chief District Judge in all even-numbered years, commencing in calendar year 2004.
- C. Pursuant to § 41–5-201 M.C.A., both district court judges are designated to act as youth court judges in the Twenty-First Judicial District, from year to year.
- D. All matters filed in District Court shall be allocated between the two departments in random numerical rotation. The Clerk of District Court shall designate the assigned department on the first page of each filed document. Trials and hearings in contested matters shall be before the judge of the department in which the action is filed. Cases which are linked by common proof and/or parties may be reassigned between departments, upon concurrence of both judges.
- E. Subject to the foregoing provisions of this Rule, work in the 21st Judicial District shall be interchangeable between the Judges thereof during the absence or disability of either of them or upon the request of either Judge. During the absence of either Judge, with the consent of the parties, the Judge present and presiding may make an order in, or any disposition, temporary or final, of any case or matter pending before the absent Judge. However, when any order is made for a hearing to be had thereafter, the Judge present and presiding shall make the order returnable before the Judge to whom it is assigned.

Rule 02. LAW AND MOTION

- A. **Wednesday.** The Court designates Wednesday of each week as law and motion day for Department No. 1. Court shall convene on law and motion day at 9:00 a.m. for criminal matters, at 1:30 p.m. for adoptions and uncontested civil matters, and at 2:30 p.m. for youth court and child abuse and neglect cases. When law and motion day falls on an official holiday the law and motion calendar shall be automatically continued to the next law and motion day absent a Court order setting it for a different date. **Any matter expected to take longer than 15 minutes should be scheduled for a separate hearing by contacting the Court Administrator.**

- B. **Thursday.** The Court designates Thursday of each week as law and motion day for Department No. 2. Court shall convene on law and motion day at 9:00 a.m. for criminal matters, at 1:30 p.m. for adoptions and uncontested civil matters, and at 2:30 p.m. for youth court and child abuse and neglect cases. When law and motion day falls on an official holiday the law and motion calendar shall be automatically continued to the next law and motion day absent a Court order setting it for a different date. **Any matter expected to take longer than 15 minutes should be scheduled for a separate hearing by contacting the Court Administrator.**
- C. **Uncontested Matters.** All uncontested matters, judgments by default, probate proceedings, uncontested *ex parte* matters, and other matters pertaining to questions of law not involving contested questions of fact shall be heard on law and motion day without need for Court approval. Contested matters involving questions of fact will not be heard on law and motion day without express approval of the presiding Court, but will be set as to day and time by order of Court as provided in Rule 3 hereof.
- D. **Open Court.** All matters presented to the Court shall be heard in open court, except for adoption hearings (Section 42-6-101, MCA), hearings and trials under the Uniform Parentage Act (Sections 40-6-111 and 40-6-120, MCA), child abuse and neglect cases (Section 41-3-205, MCA), *ex parte* matters, and those other matters required to be closed to the general public by law or allowed to be closed where the interests of justice require closure.
- E. **Calendar Preparation.** Counsel shall notify the Clerk of Court by 9:00 a.m. each Tuesday for Dept. #1, and 9:00 a.m. each Wednesday for Dept. #2, of matters to be placed on the law and motion calendar. The matters filed shall be listed by the Clerk on a weekly Law and Motion calendar in the following order: 9:00 a.m.: Criminal matters; 1:30 p.m.: Adoption, Probate and miscellaneous Civil matters; 2:30 p.m.: Abuse and Neglect cases and Youth Court matters. Prior to opening of court on each law and motion day, the Clerk shall bring the Court file in each matter on the Law and Motion calendar to the chambers of the presiding Judge. The weekly calendar shall be posted for public information on the morning of each law and motion day prior to opening of Court.
- F. **Contested Matters.** Any matter set for the Law and Motion calendar which proves to be contested is subject to postponement to be set on the contested calendar.
- G. **Document Preparation.** No matter may be set for law and motion day until the motion or other documentation and all relevant supporting documents have been

filed with the Clerk. A proposed order, decree, or judgment shall be presented to the Court at or before the time the matter is to be heard.

- H. ***Ex Parte Matters.*** Emergency, nontestimonial or self-evident documents requiring the Court's attention may be mailed to or left with the Clerk of Court for the Court with a request for the Court's immediate attention. However, any document or request requiring further explanation or support must be presented by counsel to the Court at its regularly scheduled time for law and motion.
- I. ***Minute Entries.*** The Clerk of District Court shall cause minute entries on all law and motion matters to be prepared, filed and served on counsel within two business days of the date any case is heard.

Rule 03. MOTIONS, BRIEFS, AND HEARINGS

- A. ***Motion Procedure.*** All motions filed in the Twenty-First Judicial District shall be disposed of pursuant to Rule 2 of the Uniform District Court Rules except for uncontested motions or matters which do not allow for a standard briefing schedule. Each motion shall state in the body thereof that opposing counsel have been contacted and whether the motion is contested or not. When all briefs have been filed, or the time for filing of briefs has expired, either party may file a "Notice of Issue" with the Court indicating the status of the matter and whether the party wishes to make oral argument or have the motion deemed submitted.

Where an uncontested motion is presented to the Court, an Order for the Judge's signature shall accompany it. All Orders (contested or not) shall accompany the motion as a separate document.

- B. ***Oral Arguments.*** When counsel desire oral argument on a motion, other than a motion under Rules 52, 56, 59, and 60 of the Montana Rules of Civil Procedure, in which oral arguments shall be deemed mandatory unless waived in writing by all parties and filed with the Court, counsel shall state with their Notice of Issue their reasons in support of the need for oral argument and why they are unable to fully and satisfactorily articulate their position in a brief. Oral argument will only be set by Court order at the Court's discretion.
 - (1) Counsel shall include with their Notice of Issue a proposed order granting oral argument if such is desired. In the event the Court determines that oral argument would be beneficial to a determination of the motion and grants oral argument, the moving party has the duty to schedule such argument with the District Court Administrator. The Court will thereupon notify all counsel by minute entry of the date and time of the hearing.
 - (2) If the Court determines *sua sponte* that oral argument on a motion would be beneficial to a determination of the motion, it shall so order; the moving party then has the duty to schedule oral argument with the District

Court Administrator who shall thereupon schedule the same by minute entry.

- C. **Scheduling of Contested Motions.** Time settings for hearing on contested motions will be obtained exclusively from the District Court Administrator.
- D. **Continuances.** Scheduled hearings on motions pending may be continued by the Court, on its own initiative, or upon the written motion of any party, with notice to all adverse parties. All such motions to continue must be submitted in writing, noting that opposing counsel has been notified of the request and whether they agree to or oppose the continuance, and must be accompanied by an appropriate formal order for the Court's approval.

Rule 04. ORDERS, JUDGMENTS, OR DECREES

- A. It shall be the duty of counsel obtaining any unopposed civil order, judgment, or decree, to present the same in written form to the Clerk of Court for the signature of the Court at the time of applying for the order, judgment, or decree. **All Orders (contested or not) shall accompany the motion as a separate document.**
- B. Two (2) copies of any order to show cause, temporary restraining order, arrest warrant, orders of apprehension, or like orders shall be presented to the Court for signature, both shall be signed by the Court as original orders. One shall be retained as part of the court files, and the other used for the purpose of making service.

Rule 05. SERVICE OF PROCESS AND PAPERS

No documents for which proof of service is required by Rule 5, Montana Rules of Civil Procedure, shall be filed with the Clerk of Court without the required proof of service and no action shall be taken on any such documents for which no proof of service has been filed.

Rule 06. SCHEDULING ORDERS

- A. **Time of Issuance.** When a case is at issue, but in no event more than 120 days after the filing of a civil complaint or dissolution petition, the Court shall request counsel to submit a proposed discovery and scheduling order. Counsel may stipulate to a waiver of discovery and request an immediate settlement conference or a preliminary pre-trial conference.
- B. **Exemptions.** Pursuant to Rule 16(b) of the Montana Rules of Civil Procedure, the following matters are exempt from the scheduling procedure required by this rule:
 - (1) Youth Court cases
 - (2) Condemnation cases
 - (3) Abstracts of Judgment

- (4) Transcripts of Judgment
- (5) Adoptions
- (6) Mental Commitments
- (7) Probates
- (8) Criminal cases (included to eliminate the possibility of confusion)
- (9) Small Claims appeals
- (10) Administrative appeals
- (11) Seizures and Forfeitures
- (12) Habeas Corpus and Post Conviction Relief
- (13) Name Changes
- (14) Paternity cases
- (15) Other special proceedings not subject to standard scheduling

Discovery in the above matters shall proceed according to orders issued in each case.

Rule 07. PRE-TRIAL CONFERENCES

A date certain for preliminary and final pre-trial conferences with the Court shall be set in a trial preparation order following receipt of the settlement master report described in Rule 11 hereof.

Rule 08. COMMUNICATIONS WITH THE COURT

- A. **Communications.** The Court will not act on letters or other communication from counsel or parties which do not indicate on their face that copies have been sent to opposing counsel/parties.
- B. **Ex Parte Communications.** There will be no *ex parte* discussion with the Court of substantive issues involved in pending or anticipated cases without the presence of or notice to all opposing counsel, or without prior approval or stipulation by such counsel. A violation of this rule may result in imposition of sanctions against the offending attorney or party.
- C. **Reminders to the Court.** In the event the Court has under advisement any matter including, but not limited to, a motion or decision in a bench trial for a period of more than ninety (90) days, each party affected thereby is encouraged to send to the Court a reminder letter particularly describing the matter under advisement and stating the date the matter was taken under advisement.

Rule 09. COURT RECORDS

- A. **File Checkout Privilege.** The Clerk of Court shall not permit any non-confidential case files or documents to be removed from her office without prior order of the court, except that civil files and probate files may be withdrawn for not to exceed ten (10) calendar days and criminal files and water right decree files may be withdrawn for not to exceed one (1) day only by licensed attorneys in good standing or licensed title examiners residing in Ravalli County. The Clerk must obtain a receipt from any party removing any file or court record. All such files shall be promptly returned upon request of the Court. The Court reserves the

right to suspend check-out privileges for any individual or firm that, in the judgment of the Court, abuses its privileges.

- B. **Files Which May Not Be Checked Out.** The records and files in dependent/neglect cases, adoption actions and other sealed files shall not be withdrawn, examined, or inspected by the general public, except upon order of the Court. The records of the Youth Court are governed by Section 41-5-601, *et seq.*, MCA.
- C. **Wills and Judgments.** No will admitted to probate, bond, or undertaking shall be taken from the Clerk's office under any circumstances, and no judgment before it is filed by the Clerk of Court.
- D. **File Access by the Court and Court Staff.** Any other provision of this rule notwithstanding, the District Judge and each member of his staff shall have immediate access to all District court files at all times including weekends and non-business hours and for this purpose he shall be provided with as many keys to any rooms and file cabinets containing all such files by the Clerk of District Court as the Judge may require.

Rule 10. FILINGS

- A. **Filing Fees.** All pleadings, motions, and briefs shall be filed with the Clerk of District Court. The Clerk shall not accept or file any document required to be accompanied by a filing fee unless the fee is paid therewith or unless the Court has approved a fee waiver in writing. No fee waivers shall be approved for parties represented by a privately retained attorney unless the attorney is acting in a *pro bono* capacity.
- B. **Proposed Pleadings.** Upon the filing of a motion for leave to file an amended complaint or answer, a complaint in intervention, or any other pleading requiring leave of Court to file, the movant shall file with the motion a copy of the proposed pleading or amendment and lodge the original with the Clerk of Court. If leave to file is granted, the Clerk shall file the original forthwith.
- C. **Discovery.** Pursuant to Uniform District Court Rule 4, no discovery documents shall be filed with the Clerk of Court without prior leave of the Court. Upon receipt of a deposition, the Clerk shall mark it received and place it in the court records. The Court encourages the use of condensed form depositions to save filing space and promote ease of handling.
- D. **Jury Demands.** When a demand for a jury trial is incorporated in a pleading, counsel are to so indicate in the title as well as the body of the pleading. The Clerk of Court shall note any such demand and/or waiver of such demand on the case file jacket.
- E. **Striking Pleadings.** Any papers filed which do not conform to Rule 10 or Rule 11 of the Montana Rules of Civil Procedure, or Rule 1, Uniform District Court

Rules may be stricken by the Court, on its own initiative, upon such terms as to the Court may appear just.

- F. **Orders.** When any written order or judgment is executed by the Judge, it must immediately thereafter be presented to the Clerk for filing, accompanied by the required filing fee and any other necessary documentation. **All Orders (contested or not) shall accompany the motion as a separate document.**
- G. **Brief Deadlines.** All briefs required by rule, regulation, or by Court order to be filed by a date certain shall be filed by 5:00 p.m. by the date certain. Except where approval from the Court is obtained prior to the date certain, and notice thereof is provided to each party by the party seeking an extension of time, filing beyond the date certain may result in the Court's disregarding the brief.
- H. **Length of Briefs.** No individual brief shall exceed twenty (20) pages in length, exclusive of indexes and appendices, without prior leave of the Court.
- I. **Citations in Briefs.** Briefs containing citations of authority must be accompanied by complete copies of all cases referred to therein which are not found in the Montana Reports. Copies may be photocopies or printouts from online or other research sources and must contain official reporter page numbers.
- J. **Clerk's Authority.** The Court hereby authorizes the Clerk of this Court to refuse any filing not in conformity with the Montana Rules of Civil Procedure, Uniform District Court Rules, or these Rules.

Rule 11. SETTLEMENT CONFERENCES

- A. **Settlement Conference Required.** In each civil case subject to a scheduling order pursuant to Local Rule 6, there will be a master-supervised settlement conference, the holding of which will be required before a case may be set for trial. The settlement conference shall be addressed in the scheduling order prepared and issued in accordance with Rule 6 of the Local Rules. The purposes of such conferences are to
 - (1) facilitate (but not coerce) settlement;
 - (2) lessen congestion of the trial calendar; and
 - (3) reduce the cost of litigation by providing a means to resolve contested cases prior to final trial preparation.

The District Court Administrator shall maintain a list of Court-approved Settlement Masters for use in cases where the parties are unable to agree upon a Settlement Master.

- B. **Master-Supervised Settlement Conference.** The master-supervised Settlement Conference may be held at any time upon stipulation of the parties or order of the Court. Unless otherwise agreed, the conference shall be held after the close of discovery and rulings on pretrial motions. The Court shall issue a separate order confirming the appointment of the Settlement Master providing for their compensation and procedures to be followed at the Settlement Conference. Fees for indigent litigants may be waived when the Court has approved an Affidavit of

Inability to Pay Filing Fees. Counsel who will try the case and all parties shall attend in person. Out-of-area corporations or insurance companies will have a representative with full settlement authority present in person or via speaker phone, unless personal attendance is ordered by the Court upon a showing of good cause. All participants must have requisite settlement authority.

- C. **Report of the Settlement Master.** Within five (5) days of the completion of the master-supervised Settlement Conference, the Settlement Master shall submit, on a form provided by the Court, a report indicating that the conference was held and describing the issues that were settled, if any. The report shall be filed with copies to the Court, all counsel of record and any parties not represented by counsel. In the event that the case is not fully settled, the form shall also state the following information obtained from counsel for the parties and any unrepresented party:

- (1) the total length of time anticipated to be necessary for trial;
- (2) dates counsel or key witnesses are legitimately unavailable for trial;
- (3) any special requests or needs regarding trial scheduling;
- (4) whether there is still a reasonable prospect for settlement.

Cases will be set for trial upon submission of the Settlement Master's report.

- D. **Proceedings Confidential.** No person present at a Settlement Conference, including the Settlement Master, shall be subject to examination concerning statements made by any person at the Settlement Conference. The parties will not subpoena or otherwise require the Settlement Master to testify regarding the Settlement Conference or the Settlement Master's opinions regarding the case.
- E. **Trial Preparation Order.** The Court shall issue a Jury Trial Preparation Order in cases not settled by the date of filing of the Settlement Master Report. Said Order shall set the matter for pretrial conferences and trial and provide for filing of jury instructions, and the pretrial order or proposed findings of fact and conclusions of law as the case may require.

Rule 12. TRIALS

- A. **Trial Settings.** Non-jury and jury trials shall be scheduled by the District Court Administrator throughout the year as time is available.
- B. **Jury Instructions.** Proposed instructions to the jury in a civil action shall be presented to the Court and served upon each adverse party at the preliminary pre-trial conference. The original and one copy of each instruction proposed must be furnished to the Court. The Court's working copy of each instruction shall indicate the party on whose behalf it is requested, be numbered consecutively, contain reference to the source thereof, and a citation of authority, if any, supporting the statement of law therein. The Court may receive additional proposed instructions relating to questions arising during the trial at any time prior to completion of settlement of jury instructions. Proposed forms of verdict must

be submitted by each party at the same time and in the same manner as the jury instructions. The Court requests that, where possible, a 3 ½-inch computer disk compatible with IBM PC WordPerfect 6.0 or higher (formatted) containing the proposed jury instructions and verdict form accompany the instructions. The disk should be labeled accordingly and will be returned after the trial.

Rule 13. VOIR DIRE

- A. **Length.** The length and conduct of *voir dire* examination shall not exceed one (1) hour per side without prior leave of the Court.
- B. **Conducted by One Attorney Per Party.** Only one attorney for each party shall be allowed to question the prospective jurors on *voir dire*.
- C. **Scope of Questioning.** The only proper purpose of *voir dire* is to select a panel which will fairly and impartially hear the evidence presented and render a just verdict, and to determine the grounds for any challenge for cause. Accordingly, the Court in exercising its discretion may discourage counsel from:
 - (1) Asking questions of an individual juror that are susceptible of being asked collectively;
 - (2) Asking questions covered by and answered in the juror questionnaire, except to explore some answer in great depth;
 - (3) Repeating questions asked and answered;
 - (4) Using *voir dire* for the purpose of attempting to instruct the jury on the law;
 - (5) Using *voir dire* for the purpose of arguing the case; or
 - (6) Asking a juror what his verdict might be under any hypothetical situation based upon expected evidence or otherwise.
 - (7) Unnecessary invasions of a juror's right of privacy.

Rule 14. ATTORNEYS

- A. **Attorneys of Record.** Unless appearing specially on behalf of one of the attorneys of record, no attorney, unless the attorney's firm appears on the pleadings in the case, may participate in any proceedings in the case until the attorney's firm name has been entered of record as counsel of record.
- B. **Authority as Attorney.** In case of a dispute over the authority of an attorney to represent a party to a proceeding pending before the Court, the Court will not recognize the right of the attorney to appear in such proceeding unless said attorney has a retainer in writing, signed by the client, filed in the record of the

case, or unless the party has personally signed the pleadings by virtue of which the attorney appears therein.

- C. **Withdrawal by Attorney.** Except as provided in Rule 14F hereof, no attorneys may withdraw from any case, civil or criminal, except by consent of the client and/or by leave of Court after notice has been served on the parties and opposing counsel. This provision is subject to Sections 37-61-403 through 37-61-405, MCA, and Uniform District Court Rule 10.
- D. **Addressing Witnesses and Attorneys.** Attorneys will not be permitted to address a witness on the stand in any manner except to propound the question to which an answer is desired. Attorneys will not be permitted to address each other during a trial or hearing except by permission of the Court.
- E. **Attorney Fees.** In all civil cases, contested or uncontested, where attorney's fees are requested in the pleadings, there must be competent evidence submitted to the Court from which the Court can determine reasonable attorney fees for the services rendered. The party seeking an award of attorney fees shall file and serve upon opposing counsel an affidavit itemizing the claim. The opposing party shall within ten (10) days thereafter file a request for a hearing thereon. Failure to file such a request shall be deemed a waiver of the right to a hearing on fees. In a contested proceeding, receipt of evidence pertaining to attorney's fees shall be deferred until a final decision or order on the merits of the case has been issued by the Court.
- F. **Release of Counsel of Record on Notice.** When a final disposition has been made of any case and the time for appeal has expired, all counsel of record shall be automatically relieved of their duties as counsel of record provided they first file a notice of termination with the Clerk of Court and serve the same on opposing counsel and their client. Thereafter if any further proceedings are filed therein, notice must be served on the adverse party as provided in Rule 4(D), Montana Rules of Civil Procedure.

Rule 15. EXHIBITS

- A. **Custody.** The Clerk is required to keep a list of all exhibits offered and the ruling of the Court thereon. No exhibit admitted into evidence shall be removed from the custody of the Clerk of Court without the Clerk's prior approval. Exhibits and any discovery documents filed with the Court shall be disposed of as provided in Uniform District Court Rule 12 upon final disposition of each case.
- B. **Labeling.** Counsel shall pre-label their proposed exhibits with standard exhibit labels pursuant to the trial preparation order issued by the Court.
- C. **Mounted Exhibits.** Counsel shall mount exhibits in such a fashion that they may be dismounted for folding, rolling, storage and/or shipping if necessary.
- D. **Oversize Exhibits.** Letter size copies of oversize exhibits are encouraged for use by the bench and jury, and for substitution for oversize exhibits after trial.

- E. **Electronic Courtroom.** To facilitate greater efficiency and enhance the juries' ability to view exhibits contemporaneously, the Court has implemented an electronic trial system in Courtroom No. 2. The Court may require parties to use the electronic courtroom for a trial, particularly where a large number of documentary exhibits will be presented, or where audiovisual exhibits or demonstrations are to be shown. Counsel may also request trial in the electronic courtroom. Counsel shall contact the Court Administrator for a demonstration to familiarize themselves with the electronic courtroom's operation well in advance of trial.

Rule 16. EVIDENCE OF CHARACTER

In any trial, civil or criminal, no more than three (3) witnesses will be permitted to testify as to the character of a person absent an order of the Court authorizing additional witnesses.

Rule 17. STIPULATIONS

In any case, civil or criminal, no agreement or stipulation between the parties or their attorneys with respect to the proceedings in any cause will be considered for any purpose by the Court unless made in open Court on the record or entered on the minutes, or unless it is submitted in writing, subscribed by the party against whom it is sought to be enforced, or by his attorney. It shall be the duty of the party relying upon any such minute entry to see that it is duly made. No stipulation shall be binding on the parties unless it is confirmed by order of the Court.

Rule 18. OFFERS OF PROOF

Offers of proof may be in writing or may be entered in the Court Reporter's notes outside the presence and hearing of the jury, as may be decided by the Court.

Rule 19. FINDINGS OF FACT AND CONCLUSIONS OF LAW

Proposed Findings of Fact and Conclusions of Law shall be submitted in a format suitable for signature by the Court, together with a working copy for the Court. A transmittal sheet shall accompany the findings indicating the party submitting the findings and containing a certificate of service. In addition, the Proposed Findings shall also be submitted on a CD or 3 ½-inch computer disk compatible with IBM PC, formatted in either WordPerfect 6.0 or higher or Word, and labeled accordingly (WordPerfect is preferred).

Rule 20. SURETY

- A. No officers of the Court nor any member of the bar nor his office associates or employees may act as a surety.
- B. In lieu of surety in any case, there may be deposited with the Clerk of Court lawful money or negotiable bonds or notes of the United States. The depositor shall execute a suitable bond, and if negotiable bonds or notes of the United States are deposited, shall also execute an agreement authorizing the Clerk to collect and

sell the bonds or notes in the event of default. Such deposits shall be held by the Clerk of Court until released by order of the Court.

Rule 21. DECORUM

- A. **Opening of Court.** When the Court first convenes in the morning and after any recess, the Court Clerk or Bailiff shall announce the opening of Court, and all persons in attendance in the courtroom shall rise until the Court has taken the bench.
- B. **Court Reporter.** Unless such presence is waived by the parties and the Court, a court reporter shall be on duty in the courtroom at all times the Court is in the courtroom except for juvenile detention hearings which shall be tape recorded in the absence of a court reporter.
- C. **Dress.** All counsel and pro se litigants appearing before the Court shall be dressed in appropriate business attire. Parties and witnesses shall be dressed in clean, appropriate clothing.
- D. **Seating at Counsel Table.** Only counsel of record and the named party or parties may be seated at counsel table during hearings or trial. Non-attorney legal staff, friends, relatives, or supporters may not occupy seats at counsel table during hearings or trials.

Rule 22. MARITAL DISSOLUTION ACTIONS

- A. **Temporary Child Support.** Whenever a marital dispute or custody action arises that results in a separation of parents and children, child support liability shall commence immediately. Counsel for the parties shall meet within ten (10) days of Respondent's first appearance to determine the proper amount of temporary child support based on the Montana Child Support Guidelines. Failure to make such payments may result in the imposition of appropriate sanctions. In the event of a dispute as to either the appropriate temporary custodial parent or the appropriate amount of payments, either party may file a motion with the Court requesting a hearing on the matters in dispute. The Court may award attorney's fees to the prevailing party in such hearing.
- B. **Custody Evaluations.** Upon request of either party or *sua sponte*, the Court may order that the matter be referred to appropriate professional persons at the cost of one or both parties for investigation, report, and recommendation regarding parenting arrangements for each child. The report shall be returned to the Court, the parties, and their attorneys as soon as reasonably possible thereafter.
- C. **Notice to Child Support Enforcement.** The party commencing an action for dissolution of marriage, legal separation, child support, invalidation of marriage, or modification of child support, at the time the proceeding is begun, shall include in the petition a statement as to whether any of the children involved are at that time recipients of or applicants for public assistance. Upon filing of a complaint or petition which indicates the children involved are at that time recipients of or

applicants for public assistance, counsel for that party shall immediately notify the Child Support Enforcement Bureau in writing of the pending action and file proof of such notice with the Clerk of Court.

- D. **Execution for Support Payments.** The Clerk of Court shall not issue any execution for support or alimony payments due under any decree of divorce without prior approval of the Court. Executions will not be issued unless supported by an affidavit affirmatively showing that the parties have not entered into any arrangements not contemplated by the decree of divorce, that they are not living together, and that the payments are delinquent. Details of the delinquency must be specifically set forth.
- E. **Simplified Process.** Upon request of both parties or *sua sponte*, the Court may order a simplified domestic relations process, including to reduce the time, cost and adversarial nature of proceedings. The Court will set an initial conference within 30 days of ordering a simplified marital relations process. The purpose of the initial conference is to orient the parties to the Court's case management process and to plan the timing of future activity in the case. No motions will be heard. Any issues agreed upon may be memorialized by written stipulation. Alternate dispute resolution, temporary child support, custody evaluations, studies, appraisals, information exchange and case scheduling may be discussed.
- F. **Pro Se Dissolutions/Parenting.** In dissolution or parenting cases where both of the parties are not represented by attorneys (*pro se*), the form documents for a decree of dissolution, or approval of an interim or final parenting plan shall be submitted to the Clerk of Court's office for appropriate completion review by the Court's administrative staff prior to the case being scheduled on the Court's calendar.

Rule 23. ORDERS OF PROTECTION

Jurisdictional and procedural issues involving orders of protection shall be handled in accordance with Title 40, Chapter 15, M.C.A.

Rule 24. CHILD SUPPORT GUIDELINES AND MEDICAL SUPPORT REQUIREMENTS

- A. **Worksheets.** Counsel and pro se litigants shall follow the provisions of Montana Law regarding child support and medical support cases, specifically Section 40-4-204, 40-4-208 and 40-5-101, et. seq. Child support guideline worksheets shall be filed in all such cases.
- B. **Handling Fee.** Effective October 1, 1997, and thereafter the Clerk of Court shall collect a handling fee of \$2.00 per child support and separate maintenance payment which must be paid by the payor in addition to the required payment. Said fees shall be directed into the District Court Fund.
- C. **Temporary Child Support.**

- (1) When the court is faced with pro se litigants who do not have the resources nor the ability to apply the full Montana Child Support Guidelines, or
- (2) In default or temporary support situations, when the income of the obligor parent must be estimated, based on the obligee parent's knowledge of past employment, or
- (3) In a separation, to provide support during the pendency of any proceeding in which child support will be one of the issues to be decided by the court.

Absent a showing of good cause, a straight percentage, based on the number of minor children for whom support is being sought may be applied to the gross income of the obligor to arrive at a child support order. This order shall stand without modification absent a substantial change of circumstances. However, the order may specifically allow for a redetermination under the full Montana child support guidelines thereafter. Child support shall be redetermined under the Montana child support guidelines at the trial of the matter. Such redeterminations are available through the district court or through the administrative process.

The percentages to be applied to an obligor's gross income are as follows:

17% for one child;
 25% for two children;
 29% for three children;
 31% for four children;
 34% for five or more children.

Rule 25. CRIMINAL AND DELINQUENCY ACTIONS

A. Preliminary Procedures in Felony Cases

- (1) In all felony criminal prosecutions initiated by complaint in Justice Court, the Justice Court shall set a preliminary examination no later than the regular Law and Motion day (currently Wednesday) of the third week after the week of the filing of the complaint unless District Court will not be in session on that date in which event the preliminary examination shall be scheduled to coincide with the next regular Law and Motion day. The Justice Court shall advise the Defendant and counsel to be personally present on said date to appear either for the Preliminary Examination or initial appearance on an Information in District Court.
- (2) If the County Attorney thereafter elects to file a motion for leave to file an information in District Court said motion shall be filed not less than one week prior to the preliminary examination date and the County Attorney shall immediately notify the Justice Court by sending a copy to that Court. The Justice Court shall thereupon transmit a bail transmittal memorandum, the Conditions of Release Order, any bail bond, and the application for court appointed counsel to the Clerk of District Court for

filing and the Justice Court shall send a copy of that information to the County Attorney at the same time.

- (3) The County Attorney shall be responsible to calendar the case for initial appearance on Law and Motion Day for the date originally set for the preliminary examination in Justice Court or as soon thereafter as possible under the circumstances of the case.

- B. **Arraignment.** An Acknowledgment of Rights form shall be presented to the Court by defense counsel at the time of arraignment.

A Plea of Guilty and Waiver of Rights form shall be presented to the Court by defense counsel at the time of a guilty plea.

These forms are available from the District Court Administrator.

No Plea Agreement shall be considered unless it is in writing and filed with the Court.

- C. **Omnibus Hearing.**

- (1) When a plea of NOT GUILTY is entered, the Court shall set an omnibus hearing to be held within a reasonable time thereafter (not less than thirty [30] days before trial). The purpose of the hearing is to expedite procedures leading up to the trial of the Defendant. The presence of the Defendant shall not be required. The prosecutor and defense counsel must be prepared at the hearing to address any pre-trial matter appropriate to the case, including but not limited to the matters set forth in Section 46-13-110(a) through (m), MCA. At the conclusion of the hearing a Court-approved memorandum of the matters discovered and/or settled shall be signed by the Court and counsel and filed with the Clerk of Court.
- (2) In order to conserve time in Court, the prosecution and the defense counsel shall make a reasonable effort to meet privately and stipulate to a Court-approved omnibus form which shall be submitted for final approval by the Court on or prior to the date of the omnibus hearing. Upon approval of the omnibus form, the hearing shall be vacated and settlement conference date set by the Court.

- D. **Face-to-Face Settlement Conference.** A settlement conference shall be set in all criminal and delinquency cases prior to setting the case for trial. The conference shall be attended by all counsel of record and the defendant (or youth and parents). The parties and counsel shall there attempt, in good faith, to resolve the case without a trial. A summary case status report shall be promptly filed thereafter with the Clerk of Court indicating whether or not the case has been resolved (subject to Court approval).

- E. **Pre-Trial Conference.** A preliminary pre-trial conference will be set in unresolved cases at which time counsel for the parties shall meet with the Court in

chambers to resolve any motions not previously resolved and exchange proposed jury instructions, verdict forms, exhibit and witness lists, including an original and working copy to the Court. A court reporter will not be present for the preliminary pre-trial conference unless counsel make arrangements in advance with the District Court Administrator.

- F. **Pre-Sentence Investigation.** All pre-sentence investigations shall be completed and the reports based thereon delivered to the Court and to the parties, not later than one (1) business day prior to sentencing.
- G. **Bail.** Whenever cash bail is delivered to the Clerk of Court, the cash must, as soon as possible, be deposited in a trust account with the Ravalli County Treasurer where checks, warrants, or drafts can be drawn on the account for the transfer of such funds.
 - (1) No real estate bail filed pursuant to Section 46-9-403, MCA, shall be accepted by the Clerk of the District Court unless it is accompanied by the sworn schedule specified in that statute and a current title report by a land title insurance company and unless:
 - (a) It is accompanied by a fair market appraisal by a certified appraiser of the real estate certifying that the unencumbered equity not exempt owned by the accused or sureties is worth at least double the amount of the bail or;
 - (b) It has been approved by the County Attorney.
 - (c) Proof of the recordation of a certified copy of the sworn schedule shall be file with the Clerk of Court forthwith.
 - (2) Whenever bail has been set by and furnished to a Justice of the Peace or City Judge and the cause in which the bail was furnished is transferred to the District Court, the following procedure must be followed:
 - (a) At the time the papers transferring the case to the District Court are filed with the Clerk of the Court, the bail must also be delivered to the Clerk. The amount and nature of the bail furnished must be endorsed upon the order whereby the Justice or City Judge transfers the cause to the District Court.
 - (b) If the bail furnished was cash bail, the Justice or City Judge must deposit a proper check, warrant, or draft for the full amount of the bail with a notation of the party or person who actually posted the cash bond. Upon receipt of the check, warrant, or draft, the Clerk of Court must issue a trust fund receipt and deliver it to the Justice of the Peace or City Judge.
 - (c) If the bail furnished was a bail bond or other bail as permitted by Section 46-9-401, MCA, the Justice or the City Judge must deliver

the actual documents furnished as bail to the Clerk of the District Court.

- (d) All bonds presented to the District Court for approval shall recite that they are payable to the District Court.
- (3) Whenever bail has been set by and furnished to a Justice of the Peace in an action wherein the District Court has original trial jurisdiction and the County Attorney elects to proceed in District Court by filing a motion for leave to file an information direct, the following procedure must be complied with:
 - (a) The County Attorney must, contemporaneously with the filing of the motion in District Court, file a written request with the Justice of the Peace asking that the bail be transferred to the District Court.
 - (b) The County Attorney must deliver to the Justice of the Peace the original and a duplicate copy of such request.
 - (c) The Justice of the Peace must forthwith endorse upon the original request and the duplicate copy the proper information regarding the nature of the bail, and must forthwith transfer the bail to the District Court as provided in (1) or (2) above. The duplicate copy of the request must be filed with the Clerk of the District Court, and the Justice of the Peace shall retain the original for his files.

- H. **Restitution.** Pursuant to M.C.A. 46-18-250, a Ravalli County Restitution Fund is hereby established. The 21st Judicial District Youth Court Probation Office and the Ravalli County Clerk of District Court are hereby ordered to deposit to the Ravalli County Restitution Fund all unclaimed restitution payments made on behalf of victims whose location is unknown despite reasonable efforts to locate the victim.

Disbursements from the Ravalli County Restitution Fund shall be made by the Clerk of District Court in the following order of priority:

- (1) To victims whose restitution payments were deposited in the fund whose location thereafter becomes known.
- (2) To victims awarded restitution in situations in which, due to circumstances beyond their offenders' control, the offenders are unable to obtain the resources to pay any restitution or to pay restitution in a timely fashion and the victim has a need for more prompt payment are as determined by the Court on a case by case basis.

Offenders shall continue to be fully credited for restitution payments made on behalf of victims whose location is unknown and they shall not be excused from payments on such grounds. If a victim has been paid full restitution from the fund but the offender still owes an unpaid restitution obligation, any subsequent

payments by or on behalf of the offender shall be deposited to the fund until the obligation is fully satisfied.

Rule 26. APPOINTMENT OF COUNSEL FOR INDIGENT PERSONS.

- A. **Eligibility.** The eligibility of every person to request Court-appointed counsel or the public defender must be ruled upon by the judge in jurisdiction. Financial affidavits for this purpose are available from the Clerk of Court. The eligibility determination shall be based upon the current income and assets of the person, which include real and personal property, as well as current payment obligations. The Court may require a financial contribution from a person who is determined conditionally eligible, and is or will be able to provide a limited cash contribution, as a condition of continued representation at public expense.

- B. **Priority of Appointments.** When the Court finds that a defendant is financially unable to obtain legal representation, the Court will appoint counsel to represent the defendant in the following order of priority **and availability**:
 - (1) A public defender employed by or contracted for by Ravalli County or the State of Montana.
 - (2) A list of attorneys who have indicated a willingness to accept such appointment who are specifically approved by the Court.

In the event an attorney initially recognizes a conflict or other substantial reason to warrant declining an appointment as court assigned counsel, immediately notify the Clerk of District Court. The Clerk of Court shall then contact the attorney next in the rotation.

Other than initial determinations regarding accepting appointment as indigent counsel, any other substitution or change of attorney must comply with the statutory substitution of counsel procedures found in MCA §§37-61-402 to -405. In the absence of a court approved substitute attorney, the name of the attorney next in rotation shall be obtained from the Clerk of Court. Current counsel shall contact that attorney and confirm his/her availability to substitute and then notify the Clerk of District Court. The current counsel, the client, and the substitute attorney or the next available attorney in the rotation shall file a written Stipulation for Substitution of Counsel. This Stipulation shall be brought to the Clerk of Court's attention at the time of filing.

 - (3) A general list of members of the Bar in Ravalli County approved by the Court.

- C. **Notice to Appointed Counsel.** It will be the responsibility of the Clerk of District Court to notify Court-appointed counsel of their appointment.

- D. **Hourly Fee of Non-Public Defenders.** Attorneys, other than those employed or contracted as public defenders, appointed by the Court to represent indigent

persons shall be compensated in accordance with the Montana Judicial Branch Policies and Procedures including the “Handbook on the payment of State Costs for Montana District Court,” as well as the policies adopted by the District Court Council.

Compensation of court approved attorneys shall be at the rate of sixty dollars (\$60) per hour for time expended in Court and for time reasonably expended out of Court on the case, excluding commuting time. Attorneys shall also be reimbursed for extraordinary expenses reasonably incurred in such representation, provided they are documented by original receipts and submitted with a Ravalli County or State of Montana claim warrant, but any such expenses shall not include general office overhead expenses. Claimed expenses in excess of three hundred dollars (\$300) shall be incurred only after authorization of the Court.

- E. Appointed attorneys are expected to review and follow the Performance Guidelines for Criminal Defense Representation published by the National Legal Aid and Defender Association (http://www.nlada.org/Defender/Defender_Standards/Performance_Guidelines).

The District Court expects assigned counsel will professionally and promptly respond to orders of and inquiries by the Court. Counsel shall exhibit a similar professional responsiveness and timeliness in their client contact. The District Court encourages counsel to provide adequate staffing for their offices to fulfill these responsibilities.

The District Court anticipates assignment of qualified co-counsel in capital cases, as well as other complex felony cases. Any assigned counsel may file a request for co-counsel. Any request by assigned counsel for adequate funds for retaining an expert witness or private investigator shall be supported by motion and brief, specifically detailing the basis for the request.

Rule 27. REMOVAL TO SMALL CLAIMS COURT

All actions for recovery of money or specific personal property where the amount in controversy is not in excess of Three Thousand Dollars (\$3,000.00) shall be subject to removal to small claims court in the discretion of the Court pursuant to Section 3-10-1004, MCA.

Rule 28. COURT SECURITY

- A. **Weapons.** No unauthorized person entering the Judicial Wing of the Ravalli County Courthouse may be in possession of firearms (concealed or otherwise), ammunition, knives, chemical spray devices, explosives, explosive devices, or other dangerous weapons. All persons are subject to search of their person and belongings by security personnel to detect the presence of weapons. No concealed weapon permits apply within the county courthouse. All armed out of county law enforcement agents shall check in with the Ravalli County Sheriff's office before entering the courtroom.

- B. **Food and Drink.** No person may possess or consume food or beverages in the courtroom except by prior leave of Court. Water will be supplied to counsel, litigants, jurors and court staff by the Clerk of Court.
- C. **Contact by Prisoners or Detainees.** Absent specific permission from the Court, no person other than detention center staff, court security or counsel of record may have physical contact with or communicate with in-custody prisoners or pre-trial detainees at any time said persons are in the Courtroom or being transported to or from the Courtroom. Consultation between in-custody persons and clients should occur outside the Courtroom before or after Court sessions.
- D. **Responsibility of Parties.** In any case where a party believes or reasonably should believe a potentially violent physical situation may arise, that party, through counsel or *pro se*, shall notify court staff and the court security officer sufficiently in advance so that appropriate security measures can be taken.

Rule 29. POSTPONEMENT OF TRIALS OR HEARINGS

- A. **Absence of Witness or Evidence.** Pursuant to Section 25-4-501, MCA, a motion to postpone or continue a trial on the grounds of absence of a witness or evidence shall be made upon affidavit showing:
 - (1) the nature and materiality of the expected testimony or evidence;
 - (2) that diligent effort was timely made to secure the witness or the evidence; and
 - (3) that reasonable grounds exist for the production of the witness or evidence if postponement or continuance is granted.

If the testimony or the evidence would be admissible upon the trial and the adverse party stipulates that it shall be considered as actually given on the trial, there shall be no postponement or continuance unless, in the opinion of the Court, a trial without the witness or evidence would work an injustice on the moving party.

- B. **Expense Penalty.** Any litigant and/or legal counsel responsible for late postponement of a trial or contested hearing previously set on a day other than regular law and motion day (late postponement being defined as a postponement requested within two (2) business days of the time of commencement of the trial or hearing) shall be assessed a penalty equal to any court expenses or expenses of the adverse party thereby needlessly incurred. The Court reserves the authority to waive or reduce such penalty in the interests of justice.

Rule 30. PROBATE FEES

Attorney fees in informal probate matters will not be routinely fixed by the Court, unless there is a disagreement between the attorney and the personal representative. Should there be a

disagreement, either party may present the matter to the Court after giving proper notice and a hearing shall be conducted thereon.

Rule 31. SUBSTITUTION OF JUDGE

All motions for the substitution of a judge shall be accompanied by the required filing fee at the time of filing, pursuant to Sections 3-1-804(1)(d) and 25-1-201(1)(p), MCA, otherwise the motion shall be stricken.

Rule 32. SIX-PERSON JURIES

Pursuant to Section 3-15-106, MCA, in all civil actions where the relief sought in the complaint is under the sum of Ten Thousand Dollars (\$10,000.00), the trial jury shall consist of six persons.

Rule 33. PARENTING AND VISITATION GUIDELINES

A powerful cause of stress, suffering, and maladjustment in children of divorce is not simply the divorce itself, but continuing conflict between the parents before, during and after the divorce. To minimize conflict over the children, the parents should agree on a parenting arrangement that is most conducive to the children having frequent and meaningful contact with both parents with as little conflict as possible. When parents' maturity, personality and communication skills are adequate, the ideal arrangement is reasonable visitation upon reasonable notice, since that provides the greatest flexibility. The next best arrangement is a detailed visitation agreement made by the parents to fit their particular needs and, more importantly, the needs of the children. If the parents are unable to agree, however, the following guidelines will help the parents in knowing what the presiding judge in the Twenty-First Judicial District believes are generally reasonable, unless special circumstances require a different arrangement. (See Paragraph 1.17 below.) Unless these guidelines are incorporated in a court order, they are not compulsory rules, only a general direction for parents. In the event visitation becomes an issue in court, the judge reserves the right to set whatever visitation schedule best meets the needs of the children in that case.

1. GENERAL RULES

Parents should always avoid speaking negatively about the other and should firmly discourage such conduct by relatives or friends. In fact, the parents should speak in positive terms about the other parent in the presence of the children. Each parent should encourage the children to respect the other. Children should never be used by one parent to spy on the other. The basic rules of conduct and discipline established by the custodial parent should be the base-line standard for both parents and any step-parents, and consistently enforced by all, so that the children do not receive mixed signals.

Children will benefit from continued contact with all relatives and family friends on both sides of the family for whom they feel affection. Such relationships should be protected and encouraged. But relatives, like, parents, need to avoid being critical of either parent in front of the children. Parents should have their children maintain ties with both the maternal and paternal relatives. In Montana grandparents have a legal right to reasonable visitation with their grandchildren, if it is in their best interests. Usually the children will visit with the paternal

relatives during times the children are with their father and with the maternal relatives during times they are with their mother.

In cases where both parents resided in the same community at the time of separation, and then one parent left the area, thus changing the visitation pattern, the court will consider imposing the travel costs for the children necessary to facilitate future visits on the parent who moved. The court will also consider other factors, however, such as the economic circumstances of the parents and the reasons prompting the move.

- 1.1 **Parental Communication.** Parents should always keep each other advised of their home and work addresses and telephone numbers. As far as possible, all communication concerning the children shall be conducted between the parents themselves in person, or by telephone at their residences and not at their places of employment.
- 1.2 **Grade Reports and Medical Information.** The custodial parent shall provide the noncustodial parent with grade reports and notices from school as they are received and shall permit the noncustodial parent to communicate concerning the child directly with the school and with the children's doctors and other professionals outside the presence of the custodial parent. Each parent shall immediately notify the other of any medical emergencies or serious illnesses of the children. The custodial parent shall notify the noncustodial parent of all school or other events (like Church or Scouts) involving parental participation. If the child is taking medications, the custodial parent shall provide a sufficient amount and appropriate instructions.
- 1.3 **Visitation Clothing.** The custodial parent shall send an appropriate supply of children's clothing with them, which shall be returned clean (when reasonably possible), with the children, by the noncustodial parent. The noncustodial parent shall advise, as far in advance as possible, of any special activities so that the appropriate clothing may be sent.
- 1.4 **Withholding Support or Visitation.** Neither visitation nor child support is to be withheld because of either parent's failure to comply with a court order. Only the court may enter sanctions for non-compliance. Children have a right both to support and visitation, neither of which is dependent upon the other. In other words, no support does not mean no visitation and no visitation does not mean no support. If there is a violation of either a visitation or a support order, the exclusive remedy is to apply to the court for appropriate sanctions.
- 1.5 **Adjustments in This Visitation Schedule.** Although this is a specific schedule, the parties are expected to fairly modify visitation when family necessities, illnesses or commitments reasonably so require. The requesting parent shall act in good faith and give as much notice as circumstances permit.
- 1.6 **Custodial Parent's Vacation.** Unless otherwise specified in a court order or agreed by the parties, the custodial parent is entitled to a vacation with the children for a reasonable period of time, usually equal to the vacation time the noncustodial parent takes with the children. The custodial parent should plan a

vacation during the time when the noncustodial is not exercising extended visitation.

- 1.7 **Insurance Forms.** The parent who has medical insurance coverage on the children shall supply, as applicable, insurance forms and a list of insurer-approved or HMO-qualified health care providers in the area where the other parent is residing. A parent who, except in an emergency, takes the children to a doctor, dentist or other provider not so approved or qualified should pay the additional cost thus created. However, when there is a change in insurance which requires a change in medical care providers and a child has a chronic illness, thoughtful consideration should be given by the parties to what is more important: allowing the child to remain with the original provider or the economic consequences of changing. When there is an obligation to pay medical expenses, the parent responsible therefor shall be promptly furnished with the bill by the other. The parents shall cooperate in submitting bills to the appropriate insurance carrier. Thereafter, the parent responsible for paying the balance of the bill shall make arrangements directly with the health care provider and shall inform the other parent of such arrangements. Insurance refunds should be promptly turned over to the parent who paid the bill for which the refund was paid.
- 1.8 **Child Support Abatement.** Unless a court order otherwise provides, support shall not abate during any visitation period.
- 1.9 **Missed Visitation.** When a scheduled visitation cannot occur due to events beyond either parents' control, such as illness of the parent exercising visitation or the child, a mutually agreeable substituted visitation date shall be arranged, as quickly as possible. Each parent shall timely advise the other when a particular visitation cannot be exercised. Missed visitation should not be unreasonably accumulated.
- 1.10 **Visitation a Shared Experience.** Because it is intended that visitation be a shared experience between siblings and, unless these Guidelines, a court order, or circumstances, such as age, illness, or the particular event, suggest otherwise, all of the children shall participate in any particular visitation.
- 1.11 **Telephone Communication.** Telephone calls between parent and child shall be liberally permitted at reasonable hours and at the expense of the calling parent. The custodial parent may call the children at reasonable hours during those periods the children are on visitation. The children may, of course, call either parent, though at reasonable hours, frequencies and at the cost of the parent called if it is a long distance call. During long vacations the parent with whom the child is on vacation is only required to make the child available to telephone calls every five days. At all other times the parent the child is with shall not refuse to answer the phone or turn off the phone in order to deny the other parent telephone contact. If a parent uses an answering machine, messages left on the machine for the child should be returned. Parents should agree on a specified time for calls to the children so that the children will be made available.

- 1.12 **Mail Contact.** Parents have an unrestricted right to send cards, letters and packages to their children. The children also have the same right with their parents. Neither parent should interfere with this right.
- 1.13 **Privacy of Residence.** A parent may not enter the residence of the other except by express invitation of the resident parent, regardless of whether a parent retains a property interest in the residence of the other. Accordingly, the children shall be picked up and returned to the front entrance of the appropriate residence. The parent dropping the children off should not leave until the children are safely inside. Parents should refrain from surprise visits to the other parent's home. A parent's time with the children is their own, and the children's time with that parent is equally private.
- 1.14 **Children Under Age Five.** Infants (children under eighteen months of age) and toddlers (eighteen months to three years) have a great need for continuous contact with the primary caretaker who provides a sense of security, nurturing and predictability. Generally overnight visits for infants and toddlers are not recommended unless the noncustodial parent is very closely attached to the child and is able to provide primary care. Older preschool age children (three to five) are able to tolerate limited separations from the primary caretaker. The following guidelines for children under age five are designed to take into account the child's developmental milestones as a basis for visitation. Since children mature at different rates these may need to be adjusted to fit the child's unique circumstances. These guidelines may not apply to those instances where the parents are truly sharing equally all the caretaking responsibilities for the child and the child is equally attached to both parents. Yet in the majority of situations where the custodial parent has been the primary caretaker and the noncustodial parent has maintained a continuous relationship with the child but has not shared equally in child caretaking the following guidelines should generally apply:
- A. **Infants - Birth to Six Months.** Alternate parenting plans:
- (1) Three two-hour visits per week, with one weekend day for six hours; or
 - (2) Three two-hour visits per week, with one overnight on a weekend for no longer than a twelve hour period, if the child is not breast feeding and the noncustodial parent is capable of providing primary care.
- B. **Infants - Six to Eighteen Months.** Alternate parenting plans:
- (1) Three, three-hour visits per week with one weekend day for six hours; or
 - (2) Same as (1), but with one overnight not to exceed twelve hours, if the child is not breast feeding and the noncustodial parent is capable of providing primary care; or

- (3) Child spends time in alternate homes, but spends significantly more time at one of them and no more than two twelve-hour overnights per week at the other. This arrangement should be considered only for mature, adaptable children and very cooperative parents.

C. Toddlers - Eighteen to Thirty-Six Months: Alternate parenting plans:

- (1) The noncustodial parent has the child up to three times per week for a few hours on each visit, on a predictable schedule; or
- (2) Same as (1) but with one overnight per week; or
- (3) Child spends time in alternate homes, but with more time in one than the other with two or three overnights spaced regularly throughout the week. This requires an adaptable child and cooperative parents.

D. Preschoolers - Three to Five Years Old. Alternate parenting plans:

- (1) One overnight visit (i.e. Saturday morning to Sunday evening) on alternate weekends and one midweek visit with the child returning to the custodial parent's home at least one-half hour before bedtime; or
- (2) Two or three nights at one home, spaced throughout the week, the remaining time at the other home. In addition, for preschoolers, a vacation of no longer than two weeks with the noncustodial parent.

E. Children in Day Care. In families where a child has been in day care prior to the parental separation, the child may be able to tolerate flexible visits earlier because the child is more accustomed to separations from both parents. The noncustodial parent who exercises visitation of a child under age five should not during the visits place the child with a baby-sitter or day care provider. If the noncustodial parent cannot be with the child personally, the child should be returned to the custodial parent. Visiting for short periods with relatives may be appropriate, if the relatives are not merely serving as baby-sitters.

1.15 **Visitation with Adolescents.** Within reason the parents should honestly and fairly consider their teenager's wishes on visitation. Neither parent should attempt to pressure their teenager to make a visitation decision adverse to the other parent. Teenagers should explain the reasons for their wishes directly to the affected parent, without intervention by the other parent.

1.16 **Day Care Providers.** When parents reside in the same community, they should use the same day care provider. To the extent possible the parents should rely on each other to care for the children when the other parent is unavailable.

1.17 **Special Circumstances.**

- A. **Child Abuse.** When child abuse has been established and a continuing danger is shown to exist, all visitation should cease or only be allowed under supervision, depending on the circumstances. Court intervention is usually required in child abuse cases.
- B. **Spouse Abuse.** Witnessing spouse abuse has long-term, emotionally detrimental effects on children. Furthermore, a person who loses control and acts impulsively with a spouse, may be capable of doing so with children as well. Depending on the nature of the spouse abuse and when it occurred, the court may require an abusive spouse to successfully complete appropriate counseling before being permitted unsupervised visitation.
- C. **Substance Abuse.** Visitation should not occur when a noncustodial parent is abusing drugs/alcohol.
- D. **Long Interruption of Contact.** In those situations where the noncustodial parent has not had an ongoing relationship for an extended period, visitation should begin with brief visits and a very gradual transition to the visitation in these guidelines.
- E. **Kidnapping/Threats.** Noncustodial parents who have kidnapped or hidden the children or threatened to do so should have no visitation or only supervised visits.
- F. **Breast Feeding Child.** Forcibly weaning a child, whether breast feeding or bottle feeding, during the upheaval of parental separation is not appropriate for the physical health or emotional well-being of the child. Until weaning has occurred without forcing, a nursing infant should have visits of only a few hours each. A parent should not use breast feeding beyond the normal weaning age as a means to deprive the other parent of visitation.
- G. **A Parent's New Relationship.** Parents should be sensitive to the danger of exposing the children too quickly to new relationships while they are still adjusting to the trauma of their parent's separation and divorce.
- H. **Religious Holidays and Native American Ceremonies.** Parents should respect their children's needs to be raised in their faith and in keeping with their cultural heritage and cooperate with each other on visitation to achieve these goals. These goals should not be used to deprive the noncustodial parent of visitation.
- I. **Other.** The court will limit or deny visitation to noncustodial parents who show neglectful, impulsive, immoral, criminal, assaultive or risk-taking behavior with or in the presence of the children.

2. VISITATION OF CHILDREN OVER AGE FIVE WHEN THERE IS SOLE CUSTODY OR PRIMARY PHYSICAL CUSTODY AND PARENTS RESIDE NO MORE THAN 200 MILES APART

- 2.1 **Weekends.** Alternate weekends from Friday at 5:30 P.M. to Sunday at 7 P.M.; the starting and ending times may change to fit the parents' schedules. Or an equivalent period of time if the visiting parent is not available on weekends and the child does not miss school. In addition, if time and distance allow, one or two midweek visits of two to three hours. All transportation for the midweek visits are the responsibility of the visiting parent.
- 2.2 **Mother's Day - Father's Day.** The alternate weekends will be shifted, exchanged or arranged so that the children are with their mother each Mother's Day weekend and with their father each Father's Day weekend. Conflicts between these special weekends and regular visitation shall be resolved pursuant to Paragraph 1.9.
- 2.3 **Extended Visitation.** One-half of the school summer vacation. At the option of the noncustodial parent, the time may be consecutive or it may be split into two blocks of time. If the child goes to summer school and it is impossible for the noncustodial parent to schedule this visitation time other than during summer school, that parent may elect to take the time when the child is in summer school and transport the child to the summer school session at the child's school or an equivalent summer school session in the noncustodial parent's community.
- 2.4 **Winter (Christmas) Vacation.** One-half the school winter vacation, a period which begins the evening the child is released from school and continues to the evening of the day before the child will return to school. If the parents cannot agree on the division of this period, the noncustodial parent shall have the first half in even-number years. If the parents live in the same community, in those years when Christmas does not fall in a parent's week, that parent shall have from noon to 9 P.M. on Christmas Day. For toddlers and preschool age children, when the parents live in the same community, the parents should alternate each year Christmas Eve and Christmas Day so that the children spend equal time with each parent during this holiday period.
- 2.5 **Holidays.** Parents shall alternate the following holiday weekends: Easter, Memorial Day, the 4th of July, Labor Day and Thanksgiving. Thanksgiving will begin on Wednesday evening and end on Sunday evening; Memorial Day and Labor Day Weekends will begin on Friday and end on Monday evening; Easter weekend will begin on Thursday evening and end on Sunday evening; while the 4th of July, when it does not fall on a weekend, shall include the weekend closest to the 4th. Holiday weekends begin at 5:30 P.M. and end at 7 P.M. on the appropriate days.
- 2.6 **Children's Birthdays.** Like the holidays, a child's birthday shall be alternated annually between the parents. If the birthday falls on a weekend, it shall extend to the full weekend, and any resulting conflict with regular visitation shall be resolved pursuant to Paragraph 1.9. If the birthday falls on a weekday, it shall be

celebrated from 3 P.M. to 9 P.M. (or so much of that period as the noncustodial parent elects to use).

- 2.7. **Parents' Birthdays.** The children should spend the day with the parent who is celebrating their birthday, unless it interferes with a noncustodial parent's extended visitation during vacation.
- 2.8. **Conflicts Between Regular and Holiday Weekends.** When there is a conflict between a holiday weekend and the regular weekend visitation, the holiday takes precedence. Thus, if the noncustodial parent misses a regular weekend because it is the custodial parent's holiday, the regular alternating visitation schedule will resume following the holiday. If the noncustodial parent receives two consecutive weekends because of a holiday, regular alternating visitation will resume the following weekend with the custodial parent. The parents should agree to make up missed weekends due to holiday conflicts.
- 2.9. **Visitation Before and During Vacations.** There will be no visitation the weekend(s) before the beginning of the noncustodial parent's summer vacation visitation period(s), regardless of whose weekend it may be. Similarly, that parent's alternating weekend visitation(s) shall resume the second weekend after each period of summer vacation that year. Weekend visitation "missed" during the summer vacation period will not be "made up." During any extended summer visitation of more than three consecutive weeks, it will be the noncustodial parent's duty to arrange, for a time mutually convenient, a 48-hour continuous period of visitation for the custodial parent unless impracticable because of distance.
- 2.10. **Notice of Canceled Visitation.** Whenever possible, the noncustodial parent shall give a minimum of three days notice of intent not to exercise all or part of the scheduled visitation. When such notice is not reasonably possible, the maximum notice permitted by the circumstances, and the reason therefor, shall be given. Custodial parents shall give the same type of notice when events beyond their control make the cancellation or modification of scheduled visitation necessary. If the custodial parent cancels or modifies a visit because the child has a schedule conflict, the noncustodial parent should be given the opportunity to take the child to the scheduled event or appointment.
- 2.11. **Pick Up and Return of Children.** When the parents live in the same community, the responsibility of picking up and returning the children should be shared. Usually the noncustodial parent will pick up and the custodial parent will return the children to that parent's residence. The person picking up or returning the children during times of visitation has an obligation to be punctual: to arrive at the agreed time - not substantially earlier or later. Repeated, unjustified, violations of this provision may subject the offender to court sanctions.
- 2.12. **Additional Visitation.** Visitation should be liberal and flexible. For many parents these guidelines should be considered as only a minimum direction for interaction with the children. These guidelines are not meant to foreclose the

parents from agreeing to such additional visitation as they find reasonable at any given time.

3. VISITATION OF CHILDREN OVER AGE FIVE WHEN SOLE CUSTODY OR PRIMARY PHYSICAL CUSTODY AND PARENTS RESIDE MORE THAN 200 MILES APART

- 3.1 **Extended Visitation.** All but three weeks of the school summer vacation period and, on an alternating basis, the school Winter (Christmas) vacation and Spring Break.
 - 3.2 **Priority of Summer Visitation.** Summer visitation with the noncustodial parent takes precedence over summer activities (such as Little League) when the visitation cannot be reasonably scheduled around such events. Even so, the conscientious noncustodial parent will often be able to enroll the child in a similar activity.
 - 3.3 **Notice.** At least 60 days notice should be given of the date for commencing extended visitation, so that the most efficient means of transportation may be obtained and the parties and the children may arrange their schedules. Failure to give the precise number of days notice does not entitle the custodial parent the right to deny visitation.
 - 3.4 **Additional Visitation.** Where distance and finances permit, additional visitation, such as for holiday weekends or special events, are encouraged. When the noncustodial parent is in the area where the child resides, or the child is in the area where the noncustodial parent resides, liberal visitation shall be allowed and because the noncustodial parent does not get regular visitation, the child can miss some school during the visits so long as it does not substantially impair the child's scholastic progress.
- ### **4. PARENTAL CHANGE OF RESIDENCE**
- 4.1 The provisions of Section 40-4-217, M.C.A. shall be followed with regard to parental changes of residence.
 - 4.2 A move involving relocation of the child(ren) which is opposed by the other parent shall be evaluated under the best interests of the child criteria. In addition, the Court shall consider the following:
 - A) The parent's good faith in moving;
 - B) The child's attachment to each parent;
 - C) The possibility of devising a visitation schedule that will allow meaningful contact with the non-custodial parent;
 - D) The quality of life in the proposed new home; and
 - E) The negative impact of continued hostility between the parents if the Court disapproves the relocation.
 - F) Availability of health insurance for the children in either location.

Rule 34. WITNESSES

- A. **Subpoena Duces Tecum.** A subpoena duces tecum may be issued for only such material as is relevant and material. No subpoena duces tecum shall be issued by the Clerk unless the request has first been presented to the Court and issuance approved by the Court. A subpoena duces tecum relating to records of the Ravalli County Sheriff or Ravalli County Attorney shall not be presented to the Court for approval unless it has been discussed with the affected public official to determine if they have objections.
- B. **Examination Limited.** On the examination of witnesses, only one attorney upon each side will be permitted to examine or cross-examine the same witness, except by permission of the Court first asked and obtained.
- C. **Discharge of a Witness.** A party having a witness subpoenaed in a civil cause may discharge the witness by motion made in open court. If an adverse party desires such witness to remain, the adverse party must procure the witness's further attendance by subpoena or order of the Court, and shall thereafter be responsible to the witness for witness fees and costs.

Rule 35. JUDGMENT ON WRITTEN INSTRUMENT

In all cases in which a judgment is entered upon a written instrument, the instrument must be presented to the Clerk at the time judgment is granted by the Court, and the Clerk shall note in ink across the face of the instrument the fact of the entry of judgment and its date. The Clerk shall sign the entry, attach the official seal, and file the instrument. The instrument shall not be removed except by order of the court in writing setting forth the facts of such removal.

Rule 36. MEDIA

- A. **Cameras and Recordings.** Only members of bonafide press organizations recognized by the Court will be allowed to operate cameras or electronic recording devices during court proceedings. Said members of the press shall be prepared to identify themselves and their media organization to the uniformed security officer(s) prior to entering the courtroom. Exception as provided herein, no cameras or electronic recording devices or personnel shall be allowed in the courtroom absent the express permission of the Judge.
- B. **Operation of Cameras.** All cameras or electronic recording devices allowed into the courtroom shall be in place and ready to function well prior to the scheduled court proceeding being covered. Equipment and personnel shall remain in the courtroom until such time as a recess in proceedings is called by the Court. All camera or electronic recording devices shall be operated as quietly and inconspicuously as possible. Media personnel shall respect the dignity and decorum of the Court and conduct themselves and their business accordingly. Those that are disruptive or cause distraction from the proceedings at hand shall be promptly removed from the courtroom. No additional lighting shall be used without the express prior approval of the Court.

- C. **Microphone Placement.** No microphones or other types of broadcasting or taping equipment shall be placed on or near the Judge's bench without advance request to and approval of the Court.
- D. **Disobedience of Guidelines.** Any person disregarding the guidelines as set forth herein may be asked to leave or be escorted from the courtroom and will be denied readmittance and may possibly be held in contempt of Court if a warning is ignored.

Rule 37. JURY SUMMONING PROCEDURE

- A. The Clerk of Court, as the County Jury Commissioner, shall require annually that an alphabetized computer database of potential jurors and their addresses be filed by July 1 of each year with an attached certificate signed by the Ravalli County Clerk and Recorder and the Ravalli County Commissioners which shall contain a description of the computerized random selection method employed to complete the list.

Said certificates and the lists shall be kept in the office of Clerk of Court and be made available for public inspection during normal business hours. The Clerk shall thereupon enter the database into her computer and produce a randomized database and a certificate describing the process used to do so which shall thereupon be presented to the Court for its approval and preserved for public inspection.

- B. All questions of juror exemptions or alleged incompetencies from jury duty shall be granted exclusively by the Court in all cases upon a satisfactory showing of undue hardship or other legal grounds.
- C. In all civil or criminal cases set for jury trial, the following procedures shall be followed except for cases awaiting trial as of the date of adoption of this Rule which will be dealt with on a case by case basis.
 - 1. In cases to be set for jury trial the Court will issue a written Order to the Clerk of District Court specifying the date(s) of trial, the summoning method to be used and the number of potential jurors to be summoned.
 - 2. The trial will be set at least three (3) consecutive weeks after the date set for pre-trial conference and the following schedule shall apply:
 - a) The Court shall issue an Order to the Clerk's Office immediately after the preliminary pre-trial conference to summon a jury.
 - b) The Clerk of District Court shall mail out written summons for jury service on the day of the preliminary pre-trial conference with a return, prepaid postcard included to the panel. The Clerk shall ordinarily add fifteen (15) additional jurors to the number required in anticipation of non-responses. The juror response deadline shall be set for the following Thursday after the mailing by the Clerk.

- c) The Clerk of District Court shall, on the following day after the response deadline, send an Additional Juror Summons and a praecipe to the Ravalli County Sheriff for personal service upon non-responding potential jurors. The Sheriff shall make his return thereon within four (4) days thereafter (including the weekend).
- d) The parties shall have two (2) business days thereafter to file any motion and affidavits to discharge the jury panel as allowed by section §46-16-112, M.C.A. in criminal cases. If the motion and affidavit is filed and presents substantial grounds, the Court shall conduct an immediate hearing thereon as permitted by the Court's schedule.
- e) Attached hereto is a Jury Summons Schedule to graphically portray the foregoing procedure as *Exhibit A*.

JURY SUMMONS SCHEDULE

<u>Sun</u>	<u>Mon</u>	<u>Tues</u>	<u>Wed</u>	<u>Thurs</u>	<u>Fri</u>	<u>Sat</u>
					PRETRIAL CONFERENCE ORDER TO CLERK SUMMONS MAILED OUT	
<u>Sun</u>	<u>Mon</u>	<u>Tues</u>	<u>Wed</u>	<u>Thurs</u>	<u>Fri</u>	<u>Sat</u>
					ADD'L SUMMONS TO SHERIFF	
<u>Sun</u>	<u>Mon</u>	<u>Tues</u>	<u>Wed</u>	<u>Thurs</u>	<u>Fri</u>	<u>Sat</u>
			SHERIFF RETURN OF SERVICE DUE		MOTION DEADLINE TO DISCHARGE PANEL §46-16-112 M.C.A.	
<u>Sun</u>	<u>Mon</u>	<u>Tues</u>	<u>Wed</u>	<u>Thurs</u>	<u>Fri</u>	<u>Sat</u>
	TELEPHONE SUMMONS OF ADDITIONAL JURORS IF NECESSARY					
<u>Sun</u>	<u>Mon</u>	<u>Tues</u>	<u>Wed</u>	<u>Thurs</u>	<u>Fri</u>	<u>Sat</u>
	TRIAL BEGINS					

